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CHARLES ELMOR

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 445

MAURICE CAMPBELL, FEDERAL PROHIBITION ADMINISTRATOR FOR THE SECOND DISTRICT OF NEW YORK, AND JAMES M. DORAN, FEDERAL PROHIBITION COMMISSIONER OF THE UNITED STATES, PETITIONERS,

vs.

W. H. LONG & COMPANY, INC.

BRIEF FOR THE RESPONDENT.

LEWIS LANDES,
Counsel for Respondent.

(34,576)

INDEX.

Subject Index.

	Page
Brief for the respondent:	
Questions presented	1
Argument	2
Conclusion	18

Table of Cases Cited.

Alcohol Warehouse Corp. v. Canfield, 11 Fed. (2d), 214	12
Burlington Industrial Alcohol Co. v. Blair, August 13, 1925	9
Beach Chemical Co. v. Blair, U. S. D. C., December, 1925	13
Casper v. Doran, 30 Fed. (2d), 400	16
Chicago Grain Products Co. v. Mellon, 14 Fed. (2d), 362	6
Douglas v. Edwards, 298 Fed., 245	6
Fred Feil Brewing Co. v. Blair, 2 Fed. (2d), 879	9
Friedler v. Moss, 287 Fed., 935	7
Herman Chemical Co. v. Blair, April 22, 1924	16
Higgins v. Foster, 12 Fed. (2d), 646	3, 6
Lyman, In the Matter of, 160 N. Y., 102	11
McGill v. Mellon, 5 Fed. (2d), 262	15
New Jersey Wholesale Drug Co. v. Brown, 289 Fed., 110	8
People ex rel. Doscher v. Sisson, 101 Misc., 28	9
Picone v. Commissioner of Licenses, 241 N. Y., 157	7
Rossano v. Foster, January 21, 1926	12
Swanson v. Blair, U. S. D. C., December, 1925	13
U. S. v. Katz, 271 U. S., 353	5
Yudelson v. Campbell, 25 Fed. (2d), 80	5

Other Authorities Cited.

National Prohibition Act, Sec. 1 of Title 2	3
4 of Title 2	2
6 of Title 2	2
9 of Title 2	2, 5, 6
13 of Title 3	2
Prohibition Department Regulation No. 3, Article 95, October 1, 1927	2

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 445

MAURICE CAMPBELL, Federal Prohibition Administrator for the Second District of New York, and JAMES M. DORAN, Federal Prohibition Commissioner of the United States, Petitioners,

vs.

W. H. LONG & COMPANY, INC., Respondent.

BRIEF FOR THE RESPONDENT.

Appeal from a decree of the Circuit Court of Appeals, Second Circuit, entered on the 15th day of July, 1929. The Petition for Writ of Certiorari was allowed on December 2nd, 1929 (R. 98-99).

Questions Presented.

Can the Prohibition Authorities of the United States circumvent the provisions of the National Prohibition

Act, which specifically provides the manner in which permits can be revoked?

The Respondent was issued a permit on August 16th, 1923, by the Prohibition Authorities, to operate and conduct a denaturing plant.

On October 1st, 1927, the Prohibition Department issued a regulation, known as number 3, Article 95.

The Respondent filed a renewal application, and did so without prejudice to its original permit. The renewal application was denied on December 27th, 1928 (fol. 196).

A suit in equity was instituted in the United States District Court, for the Southern District of New York, in which a decree was entered in favor of the Respondent, restraining the Prohibition Authorities from interfering with the permit of the Respondent, except in the manner provided by law. The Circuit Court of Appeals for the Second Circuit, affirmed the decree of the Court below, without opinion.

ARGUMENT.

Section 9 of Title 2 of the National Prohibition Act, amply protects the Government in the enforcement of the law. Section 6 of Title 2 of the National Prohibition Act, has no relation to denatured alcohol, and there is therefore, no statutory provision which sets a term to such permits, whether they be assumed to be authorized by Section 4 of Title 2, or Section 13 of Title 3 of the National Prohibition Act. Title 2 of the National Prohibition Act specifically defines the particu-

lar intoxicating beverages that are affected by Title 2, as follows:

> "SECTION 1. When used in Title II and Title III of this act (1) the word "liquor" or the phrase "intoxication liquor" shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented or not, and by whatever name called containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes."

Title III of the National Prohibition Act applies to manufacturers engaged in the denaturing alcohol business.

What the Prohibition Authorities are attempting to do, is to evade the specific provisions of the National Prohibition Act, in so far as the cancelling of respondent's permit (thereby violating the Act), they are amply protected against wrong doing by a permittee, under Section 9, Title 2.

The proposition of law in this entire case, was presented to the Circuit Court of Appeals, in *Higgins* v. *Foster*, 12 Fed. (2d) 646, both on the direct argument, and on the reargument, and counsel quotes from the opinion, as follows:

> * * * "We think that Section 6 of Title II has no relation to denatured alcohol and that there is therefore no statutory provision which sets a term to such permits, whether they be as-

sumed to be authorized by Section 4 of Title II or Section 13 of Title III under which Article 21 of Regulations 61 was promulgated by the Commissioner. Section 6 uses the word "liqour" which is defined by Section 1 of Title II and which seems to us clearly to be confined to beverages. It is true that it uses the word, "Alcohol", but that especially in its context precludes denatured alcohol which is not potable. Hence we think that the permit in its original form was not unlawful and that the regulation of November 14, 1925, did more than confine permits for denatured alcohol to the terms prescribed by statute. Again we do not think that by originally making the permit terminable by cancellation the Commissioner could evade or meant to evade, Section 9 of Title II assuming for the moment that that section applied to them. In effect it had an indefinite duration, and was subject only to such revocation as the law allowed. It did not lie within the power of the Commissioner by phrasing the permit in the language chosen to escape any requirements of cancellation which the statute imposed.

"Moreover, if Section 9 of Title II, applies to permits for denatured alcohol, we cannot see that the Commissioner under the guise of legislation may do in gross what he had no power to do in detail." * * *

* * * "Therefore, the question comes to me whether Section 9 of Title II applies to denatured alcohol. We think that it does." * * *

* * * "In short, Section 9 protected all holders of permits, whether for potable or non-potable intoxicants, while Section 5 prescribed

a particular procedure in the case of non-potable permits when the fault lay in the quality of the product.

"As Section 9 of Title II prescribed that the delinquent must have fifteen days' notice and be served with a statement of the facts on which he was to suffer revocation, it applied to the plaintiff, if we are right, and the regulation of November fourteenth, 1925, denied him a right which the statute gave him."

On reargument, the Circuit Court of Appeals for the Second Circuit, reasserted its position taken in the original opinion, and said in part as follows:

* * * "It is plain that when the statute was passed there was no suspicion of the ease with which denaturants could be revoked. That, however, can mean no more than that some amendment in the act is necessary to check the grave evil which has now arisen." * * *

If the Prohibiion Authorities believe that a denaturing plant is not complying with the terms and conditions set forth in the Regulations, it is their duty to proceed to revoke the permit under Title 2 of Section 9 of the National Prohibition Act, which specifically provides the manner in which a permit can be revoked.

U. S. v. *Katz,* 271 U. S. 353, has no bearing upon the issues in this case, neither have the other cases which have been quoted by the Government.

Yudelson v. *Campbell,* 25 Fed. (2d), p. 80, has to do with the refusal of an application for a new permit, and not based upon the cancellation of an outstanding permit, such as in the case at bar.

The National Prohibition Act specifically provides, that a hearing shall be granted, before a permit shall be revoked.

Chicago Grain Products Co. v. *Mellon,* 14 Fed. (2d), p. 362, seems to be predicated upon a proposition entirely foreign to the one that was presented to the Circuit Court of Apepals, Second Circuit, in the case of *Higgins* v. *Foster.*

THE COMMISSIONER OF INTERNAL REVENUE CANNOT MAKE NEW REGULATIONS REVOKING OR CANCELLING A PERMIT ALREADY ISSUED, EXCEPT IN THE MANNER PROVIDED FOR UNDER THE NATIONAL PROHIBITION ACT.

Title 2, Section 9, of the National Prohibition Act, provides as follows:

> "That only if it be found that such person has been guilty of willfully violating any such laws as charged, shall his permit be revoked." * * *

No citation has ever been issued against the Respondent, notwithstanding the specific provisions of the Act itself.

A regulation is an expression of opinion.

Judge Mayer for the Circuit Court of Appeals in this District, in *Douglas* v. *Edwards,* 298 Fed. Rep., p. 245, said on the question of Regulations:

> "We have not overlooked the treasury regulations (article 107 of Regulations 33, Revised),

> which interpreted the statute substantially as defendant contends. We are also mindful of the rule that the regulations and practices of administrative departments are entitled to weight and serious consideration in construing a statute; but opposed to this rule is the familiar one that it is for the courts to construe a statute, and not the executive departments of the Government, and where, as here, we are satisfied that the statute requires the construction which we have attributed to it, *a treasury regulation rises to no higher dignity than an expression of opinion.*" (Italics ours.)

The New York Court of Appeals on December 7th, 1925, in *Picone* v. *Commissioner of Licenses,* 241 N. Y. 157, Judge Pound for the Court stated:

> "Laws are made by the law-making powers, and not by administrative officers acting solely on their own ideas of sound public policy, however excellent such ideas may be" * * *

In *Friedler* v. *Moss,* 287 Fed. Rep. p. 935, Judge Runyon held as follows:

> "I believe that a hearing must first be had under the terms of Section 9 of Title 2, and a defendant be found guilty as charged before there can be a revocation of the permit. If any other interpretation is to be given to the language of this section it will virtually mean that a permittee can to all intents and purposes be adjudged guilty before having any chance whatever to defend himself, and it is entirely possible that this condition might depend upon irresponsible information. If the permittee

upon a hearing shall be found guilty of law violation, or of not having acted in good faith, the clause concerning revocation of his permit is mandatory in such Section."

"While this finding is at variance with the language of "Treasury Decision No. 3881," it cannot be argued * * *

"I am sure, that any official has not the right to exercise authority or to promulgate rules and regulations, except as they have their basis in the original law. I cannot believe that the framers of the National Prohibition Act intended that there should be in any set of circumstances such as those presented in this case a prejudgment or that a business to all intents and purposes legitimate should be held liable to be ruined without a fair hearing and finding of guilt first being had. In this connection the language of Judge Lynch in the matter of New Jersey Wholesale Drug Company *vs.* Brown is appropriate wherein it says 'it would be unjust and unfair to suspend a permit without a hearing, so a hearing was provided for. The authority to arbitrarily prevent the holder of a permit from doing business does not reside in any official. The hearing must first be accorded. This I think, is the plain meaning of Section 9.'

"For the above reasons, I am of the opinion that the complainant is entitled to the preliminary injunction prayed for."

In *New Jersey Wholesale Drug Co.* v. *Brown,* reported in 289 Fed. Rep., p. 110, Judge Lynch held as follows:

"A permit is a property right in the holder to do business. It would be unjust and unfair

to suspend it without a hearing, so a hearing was provided for. The authority to arbitrary prevent the holder of a permit from doing business does not appear to reside in any official. The hearing must first be accorded. This I think is the plain meaning of Section 9."

In *Fred Feil Brewing Co.* v. *Blair,* Fed. Rep., Vol. 2 (2d), p. 879, Judge Thompson said:

> "My conclusion therefore is that the Commissioner has no authority to refuse a permit unless based upon some lawful ground, and that lawful ground does not include an arbitrary discretion based upon personal judgment, but must be a judicial discretion based upon some legal ground. If the Commissioner has evidence that a manufacturer has violated the law * * *"

In *Burlington Industrial Alcohol Co.* v. *Blair,* decided on August 13th, 1925, by Judge Manton of this Court, he said:

> "The law involved in the issues presented in this case was very fairly stated by Judge Thompson in Fiel Brewing Company *vs.* Blair, 2 Fed. Rep. 2d series, 879, and by Judge Anderson in the District of Massachusetts in McGill *v.* Mellon. There, both Judges considered the National Prohibition Act, Title 2, Sections 5 and 6."

In *People ex Rel. Doscher* v. *Sisson,* 101 Misc., p. 28, the Court said:

> "The Legislature can no more delegate its power to repeal a law than it can to enact one,

and it must follow: that it cannot delegate its power to suspend the operation of a law, as that in effect is a repeal. This act confers an arbitrary power upon the officials named to 'suspend the privileges' under liquor law certificates already issued or thereafter to be issued, and to prohibit the sale of alcoholic beverages during the whole or a part of the duration of the present war. No rule or regulation is laid down for the guidance of the officials clothed with this power. There is no limitation even upon the exercise of the power. The power granted is absolute. There is nothing to insure any uniformity of action. The officials are left to act as they deem proper. In a word, they are to legislate. Such an act cannot be upheld. People *v.* Klenck Packing Co., 214 N. Y. 121-138, 140 (101 Misc. at 26), the Court said:

" 'Originally, a "license" to sell liquor was a mere privilege. It did not involve any right of property, so it could be revoked or suspended pursuant to legislative authority and the holder of it had no legal ground for redress. Metropolitan Board of Excise *v.* Barrie, 34 N. Y., 657, Kresser *v.* Lyman, 74 Fed. Rep. 765. But this is not true of the liquor tax certificates issued under the provisions of the Liquor Tax Law which was first enacted in 1896. Under that law certificates are no longer issued as matter of discretion, but are obtainable as matter of right, if the statutory requirements are met. Under that law the liquor tax certificate confers upon its holder a property right which is well recognized. Matter of Lyman, 160 N. Y., 96; Matter of Livingston, 24 App. Div. 51; Matter of Lyman (Texter certificate), 59 *id.* 217-220. Such

a certificate constitutes a contract with the state. Matter of Hilliard, 25 App. Div. 222-225; Affid. 155 N. Y. 702. A license or privilege for selling liquor which does not involve or constitute a property right can be revoked or suspended as already shown, and there are many other authorities to that effect. Stone *v.* Mississippi, 101 U. S. 814; Butcher Union Co. *v.* Crescent City Co., 111 idem. 746; Mugler *v.* Kansas, 123 idem. 623. On the other hand, where the authorization to sell liquor constitutes a property right it had never been held that it can be taken away, unless proper compensation is made. On the contrary, it has been expressly held that an act passed upon the liquor tax certificate had been issued which purported to empower the commissioner to revoke the certificate under certain conditions was invoked.' "

In the *Matter of Lyman*, 160 N. Y. 102, Judge O'Brien for the Court of Appeals on the question of permits as property rights held as follows:

"The privilege or right which it confers upon the holder cannot be revoked except in the matter and for causes provided in the Statute. The holder may invoke the general rules of law for the protection of property in any proceeding, having for its object the forfeiture or destruction of the right which the Certificate confers. A party cannot be subjected to a forfeiture of his rights of property upon a summary investigation before a Judge or Magistrate, but only upon an indictment, or criminal charge conducted according to the Rules governing criminal procedure and after a conviction by a jury.

> The power to fine and imprison and to forfeit the Certificate depends upon the same condition, and that is the conviction of the offender."

In *Alcohol Warehouse Corp.* v. *Canfield,* decided on December 3rd, 1924, and reported in 11 Fed. Rep. (2d) 214, Judge Knox held as follows:

> "An examination of Titles 2 and 3 of the National Prohibition Law satisfies me that the proceeding looking to the revocation of plaintiffs' permits were properly laid under the provisions of Section 9 of Title 2 of the Act. Section 1 of that Title defines the permit 'permit' as it is used in both Titles 2 and 3 and in Section 13 of that portion of the latter Title that is headed 'general provisions,' the Commissioner is authorized to issue Regulations 'to prevent the diversion of alcohol to illegal uses.'
>
> "The permits that were held by complainant were issued under Regulations so made."
>
> * * * "If at any time there shall be filed with the Commissioner a complaint under oath setting forth facts showing, or if the Commissioner has reason to believe that any person who has a permit is not in good faith conforming to the provisions of the Act.'
>
> the proceedings specified in the Sections having for their purposes the revocation of the permits, may be instituted."

In *Giacomo Rossano* v. *Foster et al.,* Judge Knox on January 21st, 1926, held:

> "Of course such changes as may be made cannot divest permittees of any rights they may

possess as to the inability of the Commissioner to cancel and revoke permits, unless for causes shown in the matter provided by the statute.

"In the absence of due provocation through violation of regulations by the law by the permittee or his agents, the Commissioner cannot use his new regulations as a means by which to cancel and revoke an outstanding permit."

In *Swanson* v. *Blair* and *Beach Chemical Company* v. *Blair et al.*, Judge Dickinson in the United States District Court, Eastern District of Pennsylvania, held in one opinion applying to both cases, Dec., 1925, as follows:

"A permit has been issued to the plaintiffs to engage in the industrial alcohol business in which they had invested over a quarter of a million dollars. The permit expressly stated that it should be enjoyed until surrendered or revoked in accordance with the law. No renewals on re-issues were required, the original permit continuing in force as of course. This permit had been duly issued in accordance with law and the regulations then in force. The plaintiff by its authority carried on its business under the direct supervision and continuous inspection of the Department, and so far as the plaintiffs knew in faithful compliance with the regulations and certainly with all orders and instructions given them. No complaints were lodged and no objections made to the manner in which the business was being conducted, and as it was conducted under the supervision and direction of the enforcement officers themselves,

no complaints or objections, were expected. Some time later (the date of which we were not told) the Department changed its regulations so that permits were limited to the duration of a year and annual applications and renewals or re-issues became necessary. As soon as the new regulations went into effect a revocation proceeding was begun against the permittee in accordance with the Act of Congress. We are relieved of the duty of inquiring into this complaint as it was not pressed, but the proceedings were abandoned and no order of revocation was in form made. It may possibly be that the proceedings were wholly for *in terrorem* purpose because following them about December 10th, 1925 the Department called upon the permittee to file an application for the renewal of their permit, accompanied with a copy of the new regulations, by the terms of which the permit expired with December 31st, following. Naturally the permittees took this demand to their counsel and just as naturally he accompanied the transmission of the application with a lawyer-like marginal note protesting that the permittees claimed everything and waived nothing. They did, however, in fact file their application. The application, without further notice to the permittee or opportunity to be heard, was returned to them on the last day of the year (the letter returning it being dated December 29th, 1925) with the following comment:

"After careful review of report of investigating officers you are advised that your application has been disapproved.

"As this implies that there has been an investigation a report thereon and a 'careul review'

thereof, no complaint can be made of any lack of promptness or indeed celerity in their action. Following thus, on January 2d, 1926, the permittees were put out of business.

"On this fact statement, counsel for plaintiffs submitted for the decision of the Court the two questions of (1) whether the permittees had been denied their rights in violation of the Act of Congress, and (2) if so, whether the act of denial was subject to the courts." * * *

"All of which is now ruled are the two propositions, (1) that the plaintiffs cannot be deprived of any privileges which are theirs otherwise than in accordance with the Acts of Congress and (2) that the plaintiffs have been deprived of their rights in violation of law and should have them restored." * * *

Judge Anderson in *McGill* v. *Mellon*, 5 Fed. Rep. (2d) 262, said in part as follows:

"It is important to note that Congress had not undertaken to prohibit the industrial use of alcohol. It is at least doubtful whether Congress would have power to prohibit such use. Certainly there is nothing in the Eighteenth Amendment grounding such power. It is unnecessary to discuss the constitutional question; for the National Prohibition Act shows clearly that Congress had no purpose of attempting to prohibit the use of alcohol in manufacturing perfumes, or otherwise in the industrial arts." * * *

Counsel respectfully refers the Court to the decision of the Court of Appeals for the District of

Columbia in *Herman Chemical Co.* v. *Blair*, decided by Chief Justice Martin on April 22, 1924.

The acts of the Prohibition Authorities here, very clearly show that they have no legal evidence to justify the revocation of a permit, and therefore attempt to vitiate the acts of Congress, by using the word "cancelling" instead of "revoking."

IF THE POWER ASSUMED BY THE PROHIBITION COMMISSIONER IS ILLEGAL, HE COULD NOT ONLY MAKE A PERMIT EXPIRE ON DECEMBER 31ST OF A YEAR, BUT HE COULD AT HIS OWN WILL SAY A PERMIT CAN EXPIRE ONE WEEK OR ONE MONTH AFTER ITS ISSUANCE. SUCH A PROCEDURE WILL NOT BE TOLERATED. THE RESPONDENT FEELS CONFIDENT THAT THE COURTS WILL NOT APPROVE THE ACTS OF THE AUTHORITIES IN ALLOWING A MAN TO INVEST THOUSANDS AND THOUSANDS OF DOLLARS IN ITS BUSINESS, AND WITH ONE SWEEP OF THE PEN WIPE OUT ITS BUSINESS EVEN THOUGH THE AUTHORITIES HAVE NO EVIDENCE OF VIOLATION OF THE LAW.

In *Casper* v. *Doran et al.*, 30 Fed. (2d), p. 400, it was held in part as follows:

> * * * "The argument built upon the theory that these permittees voluntarily 'surrendered' the permits originally granted to them and accepted permits limited to a year is likewise wanting in persuasiveness. Such a theory is

wholly disingenuous. No one could find such a surrender in fact. It has no existence, except as a figment, and, moreover, we are here dealing with a proposition of law, to wit, whether a permittee, otherwise with the right to a supply of alcohol, can be deprived of that right in any way other than the way provided by the law. Surely the permittee cannot change the law, nor can any department of the government, nor can the two of them acting together.

"The final stand of the permit authorities is upon the power to make rules and regulations which have the force of law under section 13 of title 3. 27 U. S. C. A. section 83. The language of this section gives no aid to any argument built upon it that the permit authorities can revoke a permit otherwise than by a judicial finding, based upon proven evidentiary facts. The suggestion that they are not revoking the basic permit granted to this permittee, but merely cutting off his supply of alcohol, has no force. A basic permit is defined to be a permit to engage in the business of manufacturing some one or more of nonpotable articles and to obtain a supply of alcohol for this purpose. To deny the supply is to revoke the permit." * * *

There is no question of permittee's permit (respondent) being revoked here. If a permittee is not acting in good faith, Section 9 of Title 2 of the National Prohibition Act amply provides the procedure by which a permit can be revoked.

IF THE ACTS OF THE PROHIBITION AUTHORITIES ARE APPROVED, IT WILL MEAN THAT BUSINESS AND ECONOMIC LIFE WILL

BE HELD AT THE MERCY OF PERSONS WHO AT THE TIME MIGHT BE PROHIBITION ADMINISTRATORS AND INSPECTORS, AND WILL BE BOUND BY THE MERE WHIM AND CAPRICE OF NEW OFFICIALS. THE POSITION OF THE GOVERNMENT IS THAT CONSIDERABLE CONFUSION HAS BEEN CREATED BY REASON OF THE DECISION OF *HIGGINS* v. *FOSTER*. THE TREASURY OFFICIALS IN WASHINGTON HAVE BEEN CONFUSED, BECAUSE THEY CLEARLY UNDERSTAND WHAT THE CIRCUIT COURT OF APPEALS MEANT BY *HIGGINS* v. *FOSTER*.

Conclusion.

IT IS RESPECTFULLY SUBMITTED THAT THE DECREE SHOULD BE AFFIRMED.

Respectfully submitted,

LEWIS LANDES,

Solicitor for W. H. Long & Company, Inc.

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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 510

S. O. WYNNE, FEDERAL PROHIBITION ADMINISTRATOR FOR EASTERN PENNSYLVANIA, ET AL.

vs.

SWANSON CHEMICAL CORPORATION

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

FILED DECEMBER 16, 1929

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 510

S. O. WYNNE, FEDERAL PROHIBITION ADMINISTRATOR FOR EASTERN PENNSYLVANIA, ET AL.

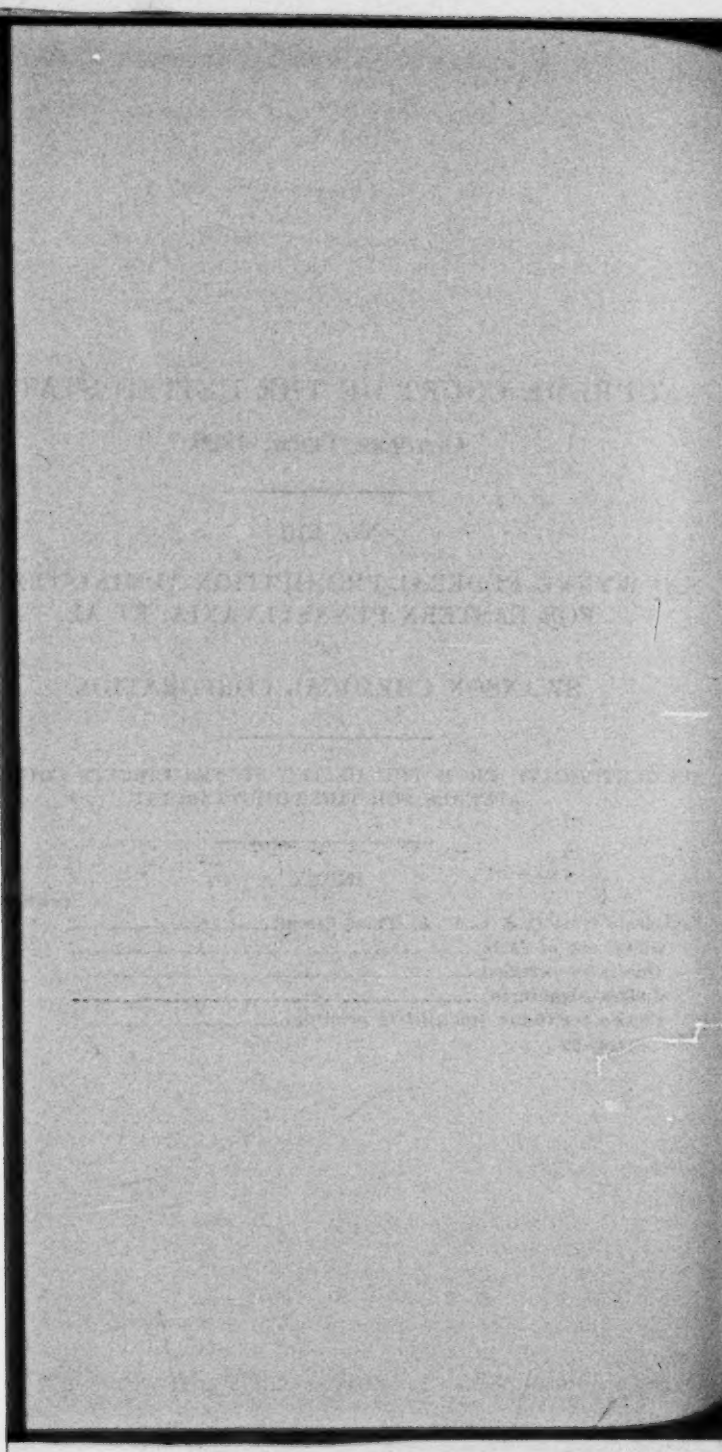
VS.

SWANSON CHEMICAL CORPORATION

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

	Original	Print
Certificate from U. S. C. C. A., Third Circuit	1	1
Statement of facts	1	1
Questions certified	3	2
Judges' signatures	4	3
Clerk's certificate (omitted in printing)	5	3



1 In United States Circuit Court of Appeals for the Third Circuit

No. 4119, October term, 1929

S. O. WYNNE, FEDERAL PROHIBITION ADMINISTRATOR FOR EASTERN Pennsylvania, and James M. Doran, Prohibition Commissioner for the United States, defendants-appellants

v.

SWANSON CHEMICAL CORPORATION, COMPLAINANT-APPELLEE

On appeal from the District Court of the United States for the Eastern District of Pennsylvania

Before BUFFINGTON, WOOLLEY, and DAVIS, Circuit Judges

Certificate to the Supreme Court

Filed Dec. 6, 1929

In order to be guided to a proper decision of the controversy appearing upon this record, the Circuit Court of Appeals for the Third Circuit desires the instruction of the Supreme Court, and under authority of section 239 of the Judicial Code certifies three questions of law which arise from the following facts:

Statement of facts

On October 7, 1924, a permit authorizing the operation of a denaturing plant, the purchase and receipt of pure alcohol thereat, the denaturing thereof, and the removal therefrom of the denatured alcohol was issued to Swanson Chemical Corporation. The permit provided that it should be in effect "* * * from the date
2 hereof until surrendered by the holder or canceled by the Commissioner of Internal Revenue for violation of the national prohibition act or regulations made pursuant thereto."

On October 1, 1927, Regulations 3, Treasury Department, Bureau of Prohibition, became effective. Article 95 of Regulations 3 provided that all permits to operate denaturing plants, in effect on October 1, 1927, should expire on December 31, 1928, unless renewed.

Pursuant to article 95 the permittee, saving all rights it might have under its original permit, on August 14, 1928, filed an application for renewal. Following an investigation the administrator disapproved the application on the grounds that the applicant was not a fit person to be entrusted with a permit, that it had violated the terms of the national prohibition act, that it had sold the alcohol denatured by it under circumstances from which it or its officers might reasonably deduce the intention of the purchaser to use the same for beverage purposes, and that it had assisted in the diversion of alcohol

for beverage purposes. The permittee was advised that it might apply for a hearing upon its application for a renewal of its permit, but it refused to do so.

A bill in equity was thereupon filed by the Swanson Chemical Corporation in the District Court for the Eastern District of Pennsylvania, asking for an injunction restraining the administrative officers from interfering with the carrying on of the business authorized by the terms of the original permit. An injunction was issued, and the defendants appealed.

3 *Questions certified*

The questions of law growing out of the foregoing facts upon which the Circuit Court of Appeals desires the instructions of the Supreme Court are these:

1. Is denatured alcohol, during its manufacture and preparation for the market, "liquor" within the meaning of sections 1 and 6, Title II, of the national prohibition act, the latter of which provides that permits to manufacture "liquor" may be issued for only one year?

If the answer to the first question be in the negative, we ask:

2. Does the provision of section 6, Title II, of the national prohibition act, which directs that every permit "shall designate and limit the * * * time when" the authorized acts may be performed, apply to a permit to operate a denaturing plant, i. e., to use alcohol in the manufacture of denatured alcohol?

If the answer to the first question be in the negative and the answer to the second question be in the affirmative, then we ask:

3. Does a provision in a permit that it shall be in force until "surrendered by the holder or canceled by the Commissioner of Internal Revenue for violation of the national prohibition act or regulations made pursuant thereto," comply with the above-mentioned requirement of section 6 of Title II of the national prohibition act, that every permit "shall designate and limit the * * * time when" the authorized acts may be performed?

If the first question be answered in the negative and if the second and third questions be answered in the affirmative, then we ask:

4 4. May a permit to operate a denaturing plant, which permit provides that it shall be in force "until surrendered by the holder or canceled by the Commissioner of Internal Revenue for violation of the national prohibition act or regulations made pursuant thereto," be terminated by a general regulation providing that all such permits shall expire on a date named?

JOSEPH BUFFINGTON,
VICTOR B. WOOLLEY,
J. WARREN DAVIS,
Circuit Judges.

[File endorsement omitted.]

5 [Clerk's certificate to foregoing omitted in printing.]

[Endorsement on cover:] File No. 34641. U. S. Circuit Court of Appeals, Third Circuit. Term No. 510. S. O. Wynne, Federal prohibition administrator for eastern Pennsylvania, et al., vs. Swanson Chemical Corporation. Certificate. Filed December 10, 1929. File No. 34641.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 511

JAMES M. DORAN, PROHIBITION COMMISSIONER OF THE UNITED STATES, ET AL.

vs.

MARTIN H. CASPER, TRADING AS DELMAR MANUFACTURING AND CHEMICAL COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

FILED DECEMBER 19, 1929

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 511

JAMES M. DORAN, PROHIBITION COMMISSIONER OF THE UNITED STATES, ET AL.

VS.

MARTIN H. CASPER, TRADING AS DELMAR MANUFACTURING AND CHEMICAL COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

	Original	Print
Certificate from U. S. C. C. A., Third Circuit	1	1
Statement of facts	1	1
Questions certified	2	2
Judges' signatures	3	2
Clerk's certificate (omitted in printing)	4	2

1 In United States Circuit Court of Appeals for the Third Circuit

No. 4128, October term, 1929

JAMES M. DORAN, PROHIBITION COMMISSIONER OF THE UNITED STATES, and Samuel O. Wynne, Federal Prohibition Administrator for the Eastern District of Pennsylvania, defendants-appellants

v.

MARTIN H. CASPER, TRADING AS DELMAR MANUFACTURING AND CHEMICAL COMPANY, complainant-appellee

On appeal from the District Court of the United States for the Eastern District of Pennsylvania

Before BUFFINGTON, WOOLLEY, and DAVIS, Circuit Judges

Certificate to the Supreme Court

Filed Dec. 6, 1929

In order to be guided to a proper decision of the controversy appearing upon this record, the Circuit Court of Appeals for the Third Circuit desires the instruction of the Supreme Court, and under authority of section 239 of the Judicial Code certifies three questions of law which arise from the following facts:

Statement of facts

On March 23, 1923, a permit authorizing the use of specially denatured alcohol in the manufacture of toilet preparations was
2 issued to Martin H. Casper. The permit provided that it "shall be in effect from the date hereof until surrendered by the holder or canceled by the Commissioner of Internal Revenue for violation of the provisions of Title III of the national prohibition act or regulations made pursuant thereto."

On October 1, 1927, Regulations 3, Treasury Department, Bureau of Prohibition, became effective. Article 113 of Regulations 3 provided that all permits of the class issued to Casper, in effect on October 1, 1927, should expire on December 31, 1928, unless renewed.

Pursuant to article 113 Casper, on August 28, 1928, filed an application for a renewal of his permit. Following an investigation the administrator notified Casper that his application had been disapproved on the grounds that he had not exercised his permit privileges in good faith and was not a fit person to be entrusted therewith. The permittee was advised that he might apply for a hearing upon his application for a renewal of his permit, but he refused to do so.

Casper thereupon filed a bill in equity in the District Court for the Eastern District of Pennsylvania asking for an injunction re-

straining the administrative officers from interfering with his permit privileges "unless and until the same shall have been revoked * * * pursuant to citation duly issued and hearing had thereon." An injunction was issued and the defendants appealed.

The questions of law growing out of the foregoing facts upon which the Circuit Court of Appeals desires the instruction of the Supreme Court are these:

Questions certified

1. Does the provision of section 6, Title II, of the national
3 prohibition act, which directs that every permit "shall designate and limit the * * * time when" the authorized acts may be performed, apply to a permit to use specially denatured alcohol?

If the answer to the first question be in the affirmative, we ask:

2. Does a provision in a permit that it shall "be in effect until surrendered by the holder or canceled by the Commissioner of Internal Revenue for violation of the provisions of Title III of the national prohibition act or regulations made pursuant thereto" comply with the aforesaid requirement of section 6, that every permit "shall designate and limit the * * * time when" the authorized acts may be performed?

If the answer to the first question be in the negative or if the answer to the second question be in the affirmative, then we ask:

3. May a permit to use specially denatured alcohol in the manufacture of toilet preparations, which permit provides that it shall "be in effect until surrendered by the holder or canceled by the Commissioner of Internal Revenue for violation of the provisions of Title III of the national prohibition act or the regulations made pursuant thereto," be terminated by a general regulation providing that all such permits shall expire on a date named?

JOSEPH BUFFINGTON,
VICTOR B. WOOLLEY,
J. WARREN DAVIS,
Circuit Judges.

[File endorsement omitted.]

4 [Clerk's certificate to foregoing omitted in printing.]

[Endorsement on cover:] File No. 34642. U. S. Circuit Court of Appeals, Third Circuit. Term No. 511. James M. Doran, prohibition commissioner of the United States, et al., vs. Martin H. Caspe, trading as Delmar Manufacturing and Chemical Company. Certificate. Filed December 10, 1929. File No. 34642.

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